



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2015-0521; FRL-9955-90-Region 4]**

**Air Plan Approval; Kentucky; Revisions to Louisville**

**Definitions and Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve portions of the State Implementation Plan (SIP) submission submitted by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), on behalf of the Louisville Metro Air Pollution Control District (District), on March 22, 2011, and May 3, 2012. The revisions to the regulatory portion of the SIP that EPA is taking final action to approve pertain to changes to the District's air quality standards for lead (Pb), particulate matter (both PM<sub>2.5</sub> and PM<sub>10</sub>), ozone, nitrogen dioxide (NO<sub>2</sub>), and sulfur dioxide (SO<sub>2</sub>) to reflect the National Ambient Air Quality Standards (NAAQS), definitional changes, and regulatory consolidation. EPA has determined that these portions of the March 22, 2011, and May 3, 2012, SIP revisions are consistent with the Clean Air Act (CAA or Act).

**DATES:** This rule will be effective [insert 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No.

EPA-R04-OAR-2015-0521. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8726. Mr. Wong can be reached via electronic mail at [wong.richard@epa.gov](mailto:wong.richard@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Sections 108 and 109 of the CAA govern the establishment, review, and revision, as appropriate, of the NAAQS to protect public health and welfare. The CAA requires periodic review of the air quality criteria — the science upon which the standards are based — and the

standards themselves. EPA's regulatory provisions that govern the NAAQS are found at 40 CFR 50 – *National Primary and Secondary Ambient Air Quality Standards*.

In a proposed rulemaking published on August 1, 2016, EPA proposed to approve portions of Kentucky's revisions to the Jefferson County air quality regulations<sup>1</sup> in the Kentucky SIP, submitted by the Commonwealth on March 22, 2011, and May 3, 2012. *See* 81 FR 50428. The March 22, 2011, submission revises Jefferson County Regulation 1.02 - *Definitions* and consolidates Regulations 3.02 - *Applicability of Ambient Air Quality Standards*; 3.03 - *Definitions*; 3.04 - *Ambient Air Quality Standards*; and 3.05 - *Methods of Measurement* into Regulation 3.01 - *Ambient Air Quality Standards* (currently entitled *Purpose of Standards and Expression of Non-Degradation Intention* in the SIP) by removing Regulations 3.02 through 3.05 and expanding and retitling Regulation 3.01. This submission also seeks to revise Regulation 1.06 - *Source Self-Monitoring and Reporting* and Regulation 1.07 - *Emissions During Startups, Shutdowns, Malfunctions and Emergencies*. EPA is not taking action on the proposed changes to Regulation 1.06 at this time. EPA approved the revision to Regulation 1.07 on June 10, 2014 (79 FR 33101). The May 3, 2012, submission builds on the revisions to Regulation 3.01 proposed in the March 22, 2011, submission by updating the Jefferson County air quality standards for Pb, PM<sub>2.5</sub>, PM<sub>10</sub>, O<sub>3</sub>, NO<sub>2</sub>, and SO<sub>2</sub> to reflect the NAAQS, reordering the sections within the regulation, and making several textual modifications. The May 3, 2012, submission also seeks to remove the Ford Motor Company NO<sub>x</sub> Reasonably Available Control Technology (RACT)

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<sup>1</sup> In 2003, the City of Louisville and Jefferson County governments merged and the "Jefferson County Air Pollution Control District" was renamed the "Louisville Metro Air Pollution Control District." However, each of the regulations in the Jefferson County portion of the Kentucky SIP still has the subheading "Air Pollution Control District of Jefferson County." Thus, to be consistent with the terminology used in the SIP, EPA refers throughout this notice to regulations contained in Jefferson County portion of the Kentucky SIP as the "Jefferson County" regulations.

permit from the SIP and replace it with a Title V permit; EPA is not taking action on the proposed permit substitution at this time. The details of Kentucky's submission and the rationale for EPA's action are explained in the proposed rulemaking. *See* 81 FR 50428. Comments on the proposed rulemaking were due on or before August 31, 2016. EPA received no adverse comments on the proposed action.

## **II. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Jefferson County Regulation 1.02 - *Definitions* (except for the definitions of "Acute noncancer effect," "Cancer," "Carcinogen," and "Chronic noncancer effect"), effective June 21, 2005, and Regulation 3.01 - *Ambient Air Quality Standards*, effective April 20, 2011. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally-enforceable under sections See page 660 of the submittal PDF in G:\ARMS\RDS Files through 2015\State Submittals\Kentucky\Finals\KY 197 - Louisville SSM & misc.)110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>2</sup> EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 4 office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

## **III. Final Action**

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<sup>2</sup> 62 FR 27968 (May 22, 1997).

EPA is taking final action to approve portions of Kentucky's submissions submitted by the Commonwealth of Kentucky through KDAQ on behalf of the District on March 22, 2011, and May 3, 2012. The submissions revise Jefferson County Regulation 1.02 – *Definitions* (except for the definitions of “Acute noncancer effect,” “Cancer,” “Carcinogen,” and “Chronic noncancer effect”), consolidate Regulations 3.02 - *Applicability of Ambient Air Quality Standards*; 3.03 - *Definitions*; 3.04 - *Ambient Air Quality Standards*; and 3.05 - *Methods of Measurement* into Regulation 3.01 - *Ambient Air Quality Standards* (currently entitled *Purpose of Standards and Expression of Non-Degradation Intention* in the SIP) by removing Regulations 3.02 through 3.05 and expanding and retitling Regulation 3.01, and revise Regulation 3.01 by reordering the sections within the regulation, making several textual modifications, and updating the Jefferson County air quality standards for Pb, PM<sub>2.5</sub>, PM<sub>10</sub>, O<sub>3</sub>, NO<sub>2</sub>, and SO<sub>2</sub> to reflect the NAAQS.

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these actions merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- are not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, these rules do not have tribal implications as specified by Executive Order 13175

(65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Sulfur Dioxide, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 21, 2016.

Heather McTeer Toney

Regional Administrator,

Region 4.



40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart S—Kentucky**

2. Section 52.920(c) is amended:

a. Under Table 2, Reg 1—General Provisions by revising the entry for “1.02”,

b. Under Table 2, Reg 3—Ambient Air Quality Standards revising the entry for “3.01”,  
and

c. Under Table 2, Reg 3—Ambient Air Quality Standards by removing the entries for  
“3.02”, “3.03”, “3.04” and “3.05”.

The revisions read as follows:

**§ 52.920 Identification of plan.**

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(c) \* \* \*

**Table 2-EPA-Approved Jefferson County Regulations for Kentucky**

<b>Reg</b>	<b>Title/subject</b>	<b>EPA approval date</b>	<b>Federal Register notice</b>	<b>District effective date</b>	<b>Explanation</b>
**	*	*	*	*	*

1.02	Definitions	[Insert date of publication in <u>Federal Register</u> ]	[Insert citation of publication]	6/21/05	Definitions approved except for “Acute noncancer effect,” “Cancer,” “Carcinogen,” and “Chronic noncancer effect”
**	*	*	*	*	*
3.01	Ambient Air Quality Standards	[Insert date of publication in <u>Federal Register</u> ]	[Insert citation of publication]	4/20/11	
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[FR Doc. 2016-29106 Filed: 12/5/2016 8:45 am; Publication Date: 12/6/2016]